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Supreme Court, U.S.
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NO. 83-1751

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN R. ROBINSON,

Petitioner,

vs.

THE STATE OF MISSISSIPPI,

Respondent.

RESPONDENT'S BRIEF IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Mississippi real property purchased by Petitioner, a non-resident alien, should escheat to the State of Mississippi since Section 89-1-23, Mississippi Code Ann. (1972), which prohibits certain non-resident aliens from owning property within the State of Mississippi, is not in conflict with Article VI, Section 2, United States Constitution, or treaties of the United States with a foreign country.

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INTRODUCTORY STATEMENT

Respondent prays that a request for writ of certiorari be denied to review the judgment of the Supreme Court of Mississippi entered on December 14, 1983, affirming

without written opinion the decision of the state circuit court below entered on July 16, 1982, which held that the Mississippi real property owned by the Petitioner, a non-resident alien citizen of Canada, should escheat to the State of Mississippi as provided by Section 89-1-23, Mississippi Code Ann. (1972).

STATEMENT OF THE CASE

The State of Mississippi filed a Quo Warranto Information pursuant to Section 11-39-1, Mississippi Code Ann. (1972), seeking to have escheated to the State a 45.02 acre tract of realty owned and held by the Petitioner, John R. Robinson, a Canadian citizen, in contravention of Section 89-1-23, Mississippi Code Ann. (1972), which provides that a non-resident alien may not purchase

and hold real property in Mississippi. Trial on the matter was held in the Circuit Court of Oktibbeha County with Judge Harvey Buck presiding. Sitting without a jury, Judge Buck held that the State's actions were proper and controlling in this instance and that they were not in contravention of any of the treaty obligations of the United States with Great Britain and Canada.

Judge Buck also found in his opinion that the evidence showed that the land the subject of this suit was not purchased in good faith, but rather was purchased by a drug smuggling ring for the sole purpose of flying in illegal drugs. The land contained a landing strip and a house. False walls had been placed in the upstairs bedrooms where drugs could easily be hidden during any search of the premises. The

evidence further showed that the purchase of this property was a central part of a large scale criminal conspiracy to violate the laws of the State of Mississippi and thus to injure the public welfare of the citizens of the State, and that the defendant, John R. Robinson, was a prime moving force behind this criminal conspiracy.

The Supreme Court of the State of Mississippi entered its decision affirming the opinion of the lower court on December 14, 1983, without written opinion. The Petition For Rehearing was denied on January 25, 1984, without opinion. Petitioner has now filed for a Writ Of Certiorari to review the decision of the Supreme Court of the State of Mississippi that real property owned by the Petitioner, a non-resident alien citizen of Canada, should

escheat to the State of Mississippi as provided by Section 89-1-23, Mississippi Code Ann. (1972).

Respondent does not agree (1) with the Petitioner's reasoning to support his request that Writ Of Certiorari be issued with respect to his interpretation of the "most-favored-nation" clause in the 1899 treaty with Great Britain and (2) the notion that the United States treaty framework is designed to protect the kind of illicit activity proven in the case at bar.

ARGUMENT

I.

SINCE NO CONFLICT EXISTS BETWEEN SECTION 89-1-23, MISSISSIPPI CODE ANN. (1972), AND THIS COUNTRY'S TREATIES WITH GREAT BRITAIN, THEN THE PROPERTY PROPERLY ESCHEATED TO THE STATE OF MISSISSIPPI BY OPERATION OF SECTION 11-39-1, MISSISSIPPI CODE ANN. (1972).

By treaty dated March 2, 1899, the United States of America and the United

Kingdom of Great Britain and Ireland entered into an agreement dealing with the disposal of property between the subjects and citizens of the respective parties. Article V of that treaty states:

> In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Convention Between the United States of America and the United Kingdom of Great Britain and Ireland, March 2, 1899, art. V, 31 Stat. 1939, TS 146 (emphasis added).

In a supplementary treaty between the United States and Great Britain dated October 21, 1921, those parties agreed in article I that:

> The provisions of the Convention of March 2nd, 1899, shall become applicable to the Dominion of Canada upon ratification of

> the present Convention in the manner provided by Article II hereof.

Supplementary Convention between the United States and Great Britain, October 21, 1921, art. I, 42 Stat. 2147, TS 663.

The Petitioner alleges that as a Canadian citizen the 1921 treaty between Great Britain and the United States renders applicable to him the provisions of a treaty consummated by the United States and Great Britain in 1899. By virtue of the "most-favored-nation" clause of the 1899 treaty, Petitioner contends that the rights and privileges with regard to real property accorded Argentine citizens in a treaty between the United States and Argentina dated July 27, 1853, should also be accorded citizens of Canada. Treaty with Argentine Confederation, July 27, 1853, art. IX, 10 Stat. 1005, TS4. One of the rights and privileges included in the

Argentine treaty is the ability to acquire realty. Article IX, 10 Stat., supra at 1009, TS4. Petitioner claims that since the Argentine Treaty, in his theory, would allow him to acquire real property and such ability is created by treaty, and since treaties take precedence over state statutes which conflict with them, then Section 89-1-23, Mississippi Code Ann. (1972), could not apply to him. The Mississippi Supreme Court has recognized the superiority of United States treaties over state law by holding in Guiseppe v. Cozzani, 238 Miss. 273, 118 So.2d 189 (1960) that if the law of a state is contrary to a treaty, that law is void.

Respondent would argue that the "most-favored-nation" clause in the 1899 treaty between the United States and Great Britain imposes a limitation upon the powers which

are granted with regard to realty through the vehicle of another treaty with another nation. The "most-favored-nation" clause which was included in the 1899 treaty between the United States and Great Britain reads as follows:

> In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Art. V, 31 Stat., supra at 1940, TS 146 (emphasis added).

It should be noted that, from the citation above of the "most-favored-nation" clause of the 1899 treaty, only the right of disposing of real property is dealt with. Thus, any rights or privileges which a Canadian citizen might seek to invoke from any other treaty,

such as the Argentine Treaty, are subject to the limitations of this particular "most-favored-nation" clause. Specifically, the treaty between the United States and Argentina provides in article IX as follows:

> In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged in any of those respects, with any higher imposts or duties than those which are paid, or may be paid, by native citizens--submitting, of course, to the local laws and regulations of each country respectively.

10 Stat. at 1009, TS 4 (emphasis added).

As can be observed by a reading of the Argentine Treaty, that treaty dealt with "acquiring and disposing of property of every sort and denomination . . . the citizens of the two contracting parties shall reciprocally

enjoy the same privileges, liberties, and rights, as native citizens. . . ." (emphasis added.) The Respondent may apply this language by utilizing it as part of the treaty which applies to his citizenship. However, in doing so, the portions of the Argentine Treaty which may be used are subject to the specific limitations of the 1899 treaty between the United States and Great Britain. In other words, the Respondent cannot go beyond the bounds of the 1899 treaty and, therefore, the "acquiring" language of the Argentine Treaty is inapplicable to a Canadian citizen.

As is thus obvious, the "most-favored-nation" clause of the 1899 treaty with Great Britain extends Petitioner's federally granted privileges only to the disposal of real property and does not deal with acquiring or holding property. Since the application of

that clause to a Canadian citizen does not include through existing treaties the ac- acquiring or holding of property, no conflict with Section 89-1-23, Mississippi Code Ann. (1972) exists. For the purposes of the instant question before this Court, which is that of acquiring or holding property, the statute and the 1899 treaty with Great Britain are not at odds.

Section 89-1-23, Mississippi Code Ann. (1972), in its entirety provides as follows:

> Resident aliens may acquire and hold land, and may dispose of it and transmit it by descent, as citizens of the state may. Nonresident aliens shall not hereafter acquire or hold land, but a non-resident alien may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same and thereafter hold it, not longer than twenty years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time. All land held or acquired contrary to this section shall escheat to the state; but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming

a citizen, whether resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.

The United States is a party to several bilateral treaties of friendship, commerce, and navigation. These treaties generally tend to regulate private and commercial rights and with respect to land ownership rights, their provisions, though clear and precise, are only incidental. Limitations on Alien Investment in American Real Estate, 60 Minn. L. REV. 621, at 657 (1976). The treaties involved in

this matter are such bilateral treaties. Id. at 658, footnote 225. These older bilateral treaties are more specific in their provisions and more limited in their scope. Their normal purpose was to satisfy inheritance problems, which apparently was a constant problem earlier this century. Id. at p. 661. This inheritance problem explains why the provision in the 1921 treaty for Canadian citizens only deals with disposing of property. With such a provision Canadian citizens could dispose of property in the United States which they inherited.

As has already been demonstrated, the 1899 treaty "most-favored-nation" clause, by which the Petitioner attempts to bring into effect the Argentine Treaty provisions with regard to realty, limits its far-reaching

effect to disposal of real property alone. Therefore, as far as the acquiring and holding of the realty is concerned, the 1899 treaty with Great Britain and Section 89-1-23 in no way stand in conflict with each other. In addition, the title of aliens to land within the limits of the several states is a matter for state regulation. United States v. Fox, 94 U.S. 315, 24 L.ed. 192 (1877); Sunderland v. United States of America, 266 U.S., 69 L.ed. 226 (1924). Since no conflict exists, then the actions by the trial court and the Mississippi Supreme Court were totally appropriate. Both ccurts clearly recognized this and the Mississippi Supreme Court did so without finding the necessity of writing a written opinion.

II.

UNITED STATES TREATY FRAMEWORK SHOULD NOT BE CONSTRUED TO PROTECT ILLICIT ACTIVITY.

Even if it is assumed, arguendo, that by virtue of the 1899 treaty "most-favored-nation" clause, the Argentine Treaty provision for the ownership of real property applied, it would be most difficult to believe that the Petitioner would be one of the class of persons protected by the treaty.

In the above-cited article IX of the 1853 Argentine Treaty, it should be noted that along with the right to acquire, hold, and dispose of real property, the nationals of each of the parties to the treaty were afforded the others rights and privileges in the area of "police of the ports . . . administration of justice . . . submitting,

of course, to the local laws and elections of each country respectively." Art. IX, 10 Stat., supra at 1009, TS4 (emphasis added). Reading article IX in its entirety, it is clear that the treaty was to assist the lawful pursuit of commerce and activities relating thereto. In no way could a large scale illicit drug operation fall into the category of lawful activity. Respondent feels that even if the entire Argentine "most-favored-nation" clause is construed as applicable, the Petitioner overstepped any protection he may have been due under such construction by engaging in the illicit activity which the trial judge noted in his opinion. Therefore, since he overstepped the treaty's coverage, state law would control thereby making the State's actions most appropriate.

It is the Respondent's belief that no treaty of the type mentioned in this brief should be utilized as a cover for illegal activity. There could not help but be a "good faith" implication that any rights conferred on the citizens of another country who are non-resident aliens would be free to exercise those rights conferred by treaty so long as they did so in "good faith" without conflict with the local laws. It is inconceivable that such a treaty could be utilized as protection for illegal activities in this country and allow a non-resident alien to come in and violate the laws of this country by his illegal activities and not be subject to state laws. Robinson's actions were clearly outside the treaty's "good faith" contemplations. With the treaty not being

applicable, state law governs and Section 89-1-23, Mississippi Code Ann. (1972) calls for the escheatment of the property of a non-resident alien to the state.

It should be noted that there is a possibility of severe public policy damage due to the ramifications of any ruling by this Court which may return the real property to the Petitioner. If the Supreme Court overrules the trial court and the Mississippi Supreme Court's actions in the instant situation, such a decision would permit any large-scale illegal operation of whatever type to search their ranks to find either a British or Canadian citizen, or any other foreign citizen similarly situated, in order to utilize that particular person to purchase the necessary realty to run their illegal

enterprise. Since the law would have been construed so as to not allow the forfeiture of the property, the Court would find itself in the unenviable position of protecting illegal business activity in this State. In view of this possibility, Respondent would again urge the Court to allow Section 89-1-23 to control in the instant situation, thereby divesting Petitioner of his realty in accordance with Section 11-39-1.

CONCLUSION

It is the State's position that the 1899 treaty which contains the "most-favored-nation" clause is limited to the disposal of property and does not apply to the purchase and holding of property by a non-resident alien. Any attempt to apply the realty provisions of the 1853 Argentine Treaty must be subject

to the limitations of the 1899 treaty's "most-favored-nation" clause. Since none of the treaty obligations of the United States require any state to extend to this Petitioner the privilege of acquiring and holding real property, then Section 11-39-1 should be utilized to divest the Petitioner of the realty he has acquired in contravention of Section 89-1-23. This is exactly what has taken place in this situation.

In addition, if it is assumed that the Petitioner possesses the right to acquire and hold real property, the framers of the treaties discussed above certainly intended to cover only legitimate operations by the citizens of the respective countries which would include the idea that the real

estate would be purchased in "good faith", to be utilized in a legitimate fashion and not contrary to law. It would simply be a terrible thing to allow a non-resident alien to purchase property to violate the laws of this country and yet utilize the provisions of a treaty not even specifically dealing with his own country to escape the application of the local laws. A ruling from this Court overturning the trial judge and the Mississippi Supreme Court's decision would enable any large-scale illicit operation to purchase realty for its purposes. Any fair interpretation of the treaties involved and their effect on the Mississippi statute in question in no way mandates a reversal of this particular case. Public policy considerations of the instant situation certainly mitigate in favor of

the State. This Court should affirm the trial court's and the Mississippi Supreme Court's decision.

Since our treaty obligations with Great Britain and Canada in no way conflict with Section 89-1-23, Mississippi Code Ann. (1972), then that statute along with Section 11-39-1, Mississippi Code Ann. (1972), should operate as intended. It is the intention of those statutes to protect the health, welfare and safety of Mississippi citizenry. Their intention should be manifested in this Court's affirmance of the trial court's and Mississippi Supreme Court's decision.

Respectfully submitted,

STATE OF MISSISSIPPI

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PROOF OF SERVICE

I, MACK CAMERON, Special Assistant Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of August, 1984, I served copies of the foregoing Respondent's Brief In Response To The Petition For Writ Of Certiorari as follows:

(1) Upon the Supreme Court of the United States, by mailing Federal Express forty (40) copies in a duly addressed envelope, to the Clerk, United States Supreme Court, 1 First Street, N.E., Washington, D.C., 20543; and

(2) On counsel for Petitioner, by mailing three (3) copies in a duly addressed envelope, with postage prepaid, to Honorable Samuel H. Wilkins, 105 North State Street, P. O. Box 504, Jackson, Mississippi 39205.

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